Award No. 5480
Docket No. 5267
2-CRI&P-BK-'68

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Blacksmiths)

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, the Carrier improperly refused to compensate Blacksmith Apprentice G. R. Riley, eight (8) hours at the pro rata rate of pay for July 5, 1965 (Fourth of July holiday).

2. That accordingly, the Carrier be ordered to compensate the aforenamed employe for eight (8) hours at the straight time rate of pay.

EMPLOYES' STATEMENT OF FACTS: Blacksmith Apprentice G. R. Riley, hereinafter referred to as the claimant was employed as Apprentice by the Chicago, Rock Island and Pacific Railroad Company, hereinafter referred to as the Carrier, Silvis, Illinois. Claimant as of July 1, 1965 was regularly assigned as Blacksmith Apprentice 7 A.M. to 3:30 P.M. with work weeks, Monday through Friday, rest days Saturday and Sunday. Claimant was furloughed July 1, 1965. July 4, a holiday under the terms of the controlling agreement, fell on Sunday, and Monday, July 5, was proclaimed the legal holiday, and Carrier has declined to compensate claimant therefor in accordance with the provisions of Article III of the August 19, 1960 Agreement.

Claimant has seniority date of December 28, 1964, which is in excess of 60 calendar days preceding the holiday, July 5, 1965. The Claimant had compensation paid him by the carrier credited to eleven (11) or more of the thirty (30) calendar days immediately preceding the holiday, July 5, 1965.

The work week for other than regularly assigned employes for the purpose of determining whether they qualify for holiday compensation in that the holiday falls on a work day of the work week, is under the terms of

Your Board in Award 4603, in denying the monetary portion of a Carmen's claim after sustaining the rule violation involved, held:

> "Neither can the Board find support for the Organization's claim, because it failed to show that the claimants — who were on their rest day — were available. Without evidence of the Claimants' availability, their claim cannot be allowed."

Third Division Awards 14633 and 14634 in denying claims of yard clerks for one day's pay on various dates account not used to fill temporary vacancies held that the claimants failed to file written desire to fill temporary vacancies in accordance with a March 31, 1959 Memorandum of Understanding and Carrier properly used the available senior qualified men who had filed written requests to perform such work.

When juxtaposed against the instant claim, the above awards throttle the Employes' cause in this dispute. This claim should be denied.

It is hereby affirmed that all of the foregoing is a matter of correspondence with the Employes on the property or is known thereto. Oral hearing is not requested unless requested by the Employes, in which event Carrier would be represented.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon

Claimant, Blacksmith Apprentice G. R. Riley, was furloughed on July 1 1965 and recalled to service in another capacity on July 7, 1965. During th period from July 1, 1965 through July 7, 1965, Claimant performed no com pensated service and was classified by Carrier as "other than a regularl assigned employe.' Claimant here seeks compensation at the pro rata rate o pay for July 5, 1965 (Independence Day Holiday) in accordance with th provisions of Article III of the August 19, 1960 National Agreement.

It is undisputed that Claimant possessed sufficient seniority for qual fication and had performed the required compensated service for Carrier du ing the thirty-day period prior to the holiday on July 5, 1965. Consequentl the remaining issue for determination is whether or not Claimant was "avai able" for service as required by Article III, Section 3 of the August 19, 196 Agreement on the work days immediately preceding and following said holida

Carrier contends that Claimant was not "available" for service on th workdays immediately preceding and following the holiday in question b cause he failed to comply with Article IV, Section 2 of the August 21, 19 National Agreement, which in part provides as follows:

> "Furloughed employes desiring to be considered available to perform such extra and relief work will notify the proper officer

of the Carrier in writing, with copy to the local chairman, that they will be available and desire to be used for such work. . . . Furloughed employes who would not at all times be available for such service will not be considered available for extra and relief work under the provisions of this rule."

Petitioner urges that Claimant must be considered to have been "available" under the provisions of Article III, Section 3 of the August 19, 1960 Agreement because he neither laid off of his own accord nor failed to respond to a call for service from Carrier on the work days immediately preceding and following the holiday on July 5, 1965.

Article III, Section 3 of the August 19, 1960 Agreement in part provides as follows:

"All others for whom holiday pay is provided in Section 1 hereof shall qualify for such holiday pay if on the workday preceding and the workday following the holiday they satisfy one or the other of the following conditions:

(i) Compensation for service paid by the Carrier is credited; or

(ii) Such employe is available for service.

NOTE: 'Available' as used in subsection (ii) above is interpreted by the parties to mean that an employe is available unless he lays off of his own accord or does not respond to a call, pursuant to the rules of the applicable agreement, for service."

Analysis of the word "available", as used in Article III, Section 3 (ii) of the 1960 Agreement and defined in the "Note" thereunder, discloses only two definitive situations in which an employe will not be considered "available" for relief work insofar as eligibility for holiday pay is concerned. Moreover, we find no reference to Article IV, Section 2 of the 1954 Agreement, relied on by the Carrier nor other indication that said Agreement is applicable for the purpose of establishing availability under the provisions of Article III, Section 3 of the 1960 Agreement, which pertains to qualifications for holiday pay.

The precise issue involved in this dispute has already been considered by this Division in our Awards 5061 through 5090, where we concluded that similar claimants were not required to comply with Article IV of the 1954 National Agreement by notifying particular Carriers of their desire to be considered available for relief work in order to establish eligibility for holiday pay pursuant to the applicable provisions of Article III, Section 3 of the 1960 National Agreement. These earlier Awards are neither erroneous nor distinguishable, and constitute controlling precedent in this case. Accordingly, the claim must be sustained.

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 21st day of June, 1968.

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